

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

MICHAEL NEELY,)	
)	
Petitioner,)	
)	
v.)	Case No. 3:06-0251
)	Judge Echols
)	
RICKY BELL, WARDEN,)	
)	
Respondent.)	

ORDER

This matter is before the Court on a Report and Recommendation ("R & R") (Docket Entry No. 8) in which the Magistrate Judge recommends (1) denying Respondent's Motion to Dismiss (Docket Entry No. 4) this successive or second petition under 28 U.S.C. § 2254 and (2) transferring this case to the United States Court of Appeals for the Sixth Circuit. The basis for that recommendation is that leave to proceed on second or successive petitions must first be presented to the court of appeals pursuant to 28 U.S.C. § 2244(b)(3)(A).

Petitioner filed a response to the R & R in which he apparently concedes that the transfer is appropriate by writing that "this TRANSFER to the Sixth Circuit be treated (Considered) as an 'Application for an Order, Authorizing This Respective Courts [sic] Review.'" (Docket Entry No. 9).

Upon review of an R & R, the Court "shall make a *de novo* determination of the matter and may conduct a new hearing, take additional evidence, recall witnesses, recommit the matter to the Magistrate Judge for further proceedings and consideration, conduct

conferences with counsel for the affected parties, and receive additional arguments, either oral or written, as the District Judge may desire." L.R.M.J. 9(b)(3). See, Fed.R.Civ.P. 72(b).

This Court has reviewed the Petition for Writ of Habeas Corpus (Docket Entry No. 1), the Respondent's Motion to Dismiss and Petitioner's response thereto (Docket Entry Nos. 4 & 7), together with the R & R. The Court finds the Magistrate Judge employed the proper legal analysis in recommending a transfer of this action because "when a second or successive petition for habeas corpus relief or § 2255 motion is filed in the district court without § 2244(b)(3) authorization from this court [the Sixth Circuit], the district court shall transfer the document to this court pursuant to 28 U.S.C. § 1631." In re Sims, 111 F.3d 45, 47 (6th Cir. 1997).


Accordingly, the Court rules as follows:

(1) The Report and Recommendation (Docket Entry No. 8) is hereby ACCEPTED;

(2) The Respondent's Motion to Dismiss (Docket Entry No. 4) is hereby DENIED; and

(3) The Clerk of this Court is hereby directed to TRANSFER this file to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631.

It is so ORDERED.



ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE